IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Revision No. 2985 of 2006

Date of Decision: 31.8.2006

Kuldip Singh

...Petitioner.

Versus

Harjoginder Singh

...Respondent.

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.

PRESENT: Ms. Jatinder Jit Kaur, Advocate for the petitioner.

Mr. R.S.Athwal, Advocate for the respondent.

AJAY KUMAR MITTAL, J.

The respondent-landlord filed a petition for ejectment of the petitioner from the demised premises on two grounds. The first ground of eviction being arrears of rent w.e.f. 10.3.2000 and secondly that the landlord required the shop in question for his bonafide personal use. The petition was contested by the tenant, who on appearance tendered the arrears of rent w.e.f. 10.3.2000 to 10.7.2001 at the rate of Rs.300/- per month along with interest and costs, which was accepted by the landlord under protest. The ground of personal necessity was contested.

From the pleadings of the parties, following issues were framed by the learned Rent Controller on 29.10.2001:-

"1. Whether there is no relationship of landlord and tenant between the parties? OP Parties.

2. Whether the respondent is in arrears of rent? OPP
3. Whether the petitioner requires the demised premises for his own use and occupation? OPP
4. Whether the site plan is incorrect? OPR
5. Whether the petitioner has concealed the material facts? If so, its effect? OPR
6. Relief."

The Rent Controller while deciding issues No.1,3 and 4 observed that the demised shop was required by the landlord for his personal use. The Rent Controller on the basis of evidence came to the conclusion that the son of the landlord was running the business of computer and the landlord intended to start STD/PCO in the shop in question. It was held that the landlord required the shop in question to start his own business. The Appellate Authority affirmed the findings of the Rent Controller and dismissed the appeal of the tenant.

Learned counsel for the petitioner submitted that the eviction of the petitioner has been ordered on the ground of personal necessity whereas the landlord in his statement had specifically stated that he purchased the shop to start own business and at the time of purchase the petitioner was already sitting in the shop as tenant and in that situation the ground made by the landlord that the premises were required for his personal use was not legally sustainable. Thus, the findings recorded by the authorities below are liable to be set aside.

Learned counsel for the respondent controverted the submission of learned counsel for the petitioner and argued that the petitioner had not raised such plea before the authorities below. He submitted that the father of the landlord Sadhu Singh who was the original owner of the property in dispute had executed a Will dated 31.10.1979

Ex.A-1 bequeathing various portions of the said building as per site plan Ex.A-2 in which the demised shop was bequeathed to his brother Darshan Singh. He next submitted that it was specifically provided in the Will that right to transfer shall be to blood relations and the landlord had purchased the demised shop and the entire share of Darshan Singh in property No. EG-808/1, Mohalla Gobindgarh, Jalandhar vide sale deed dated 10.3.2000 (Ex.A.5) and in these circumstances it cannot be said that the landlord had purchased the disputed property with motive to get the tenant Kuldeep Singh evicted and was now taking benefit thereof by seeking eviction of the tenant and that there was no bonafide need of the landlord. Counsel further submitted that both the authorities have concurrently recorded findings of fact that the property in dispute is required bonafide by the landlord and the same is based on appreciation of evidence and does not call for any interference in the revision petition.

I have heard learned counsel for the parties and perused the record. I find force in the submission of learned counsel for the respondent.

Although the argument raised by the counsel for the petitioner was never raised before the authorities below even otherwise the same does not carry any weight. A perusal of Ex.A-1 and Ex.A-2 supports the stand of the landlord. According to Will Ex.A-1, Sadhu Singh distributed his property amongst his legal heirs as per site plan Ex.A-2 according to which portion No.4 came to the share of Darshan Singh which included the shop in dispute. Harjoginder Singh (AW2) during cross examination had stated that the sale deed was executed in his favour on the basis of Will and unit No.4 was purchased by him. Darshan Singh, the real brother of the landlord had sold the shop in dispute and all other share in property No. EG-808/1, Mohalla Gobindgarh, Jalandhar vide sale deed dated 10.3.2000

to the landlord and in the present circumstances, the sale of property by Darshan Singh to the landlord cannot be said to be with an oblique motive. Moreover, both the courts below have concurrently come to the conclusion that the property in dispute is bonafide required by the landlord.

In view of the above, there is no merit in this revision petition and the same is hereby dismissed.

At this stage, learned counsel for the petitioner states that the petitioner be allowed to use the premises till 31.3.2007. Learned counsel for the respondent on instructions from the respondent who is present in the Court, states that the petitioner can be permitted to retain the shop till 31.3.2007 provided he files an undertaking that he shall deliver the vacant possession of the shop in question on or before 31.3.2007. Accordingly, the petitioner is allowed time till 31.3.2007 provided the petitioner files an undertaking that he shall deliver the vacant possession of the demised premises to the respondent on or before 31.3.2007, within three days from today. However, it is clarified that in case the petitioner fails to file the said undertaking, the respondent shall be at liberty to evict the petitioner forthwith in accordance with law.

August 31, 2006 **(AJAY KUMAR MITTAL)**
nt/gbs **JUDGE**